

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

AARON DANIELS and ROBERT SZWAJA)
Individually, and on Behalf of All Others)
Similarly Situated,)
)
Plaintiffs,) Case No. CV 08-4736
)
v.) JUDGE WEXLER
)
PREMIUM CAPITAL FUNDING, LLC) MAGISTRATE JUDGE LINDSAY
D/B/A TOP DOT MORTGAGE, DAVID)
BROWN, FRANK FIORE and DANIEL)
MANSI,)
)
Defendants.)

JOINT PRE-TRIAL ORDER

i. The caption is above.

ii. Trial Counsel:

For Plaintiffs:

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Fax: 212 898-9086

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Ryan F. Stephan
(Admitted Pro Hac Vice)
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(312) 233-1560 (Fax)

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(516) 570-3743 (fax)

Individual Defendants:

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(516) 802-7834

Frank Fiore (*Pro Se*)
6900 Jericho Turnpike
Suite 115W
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Daniel Mansi (*Pro Se*)
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(631) 297-8153

iii. Plaintiffs: This case is to be tried to a jury. Plaintiffs believe it will last 10 days. Plaintiffs request six jurors, with a non-unanimous vote (five of six).

Defendants: A non-jury trial is preferable, but has no objection to Plaintiffs' request for a jury trial, the number of jurors or the non-unanimous vote. The corporate defendant believes the trial will last 5 days.

iv. A list of fact and expert witnesses whose testimony is to be offered in its case in chief

For Plaintiffs:

1. Aaron Daniels
2. Robert Szwaja
3. Paul Bernstein
4. Carol Zeifman

5. James D. Ford III
6. Henry Rivera
7. Brian Corona
8. Garry Thelamy
9. William Gilliam
10. David Droke
11. Jamel Wright
12. Rafael Meza
13. William Telford
14. Carlos Lember
15. Chris Clark

Note: Plaintiffs may not call all of the designated witnesses because of logistics and/or duplicativeness of witnesses.

For Defendants,

1. Jason Shannon
2. Mario Argenzio
3. David Ruiz
4. John Ramirez

5. Dan Rebolini
6. Kolman Brown
7. David Brown
8. Frank Fiore
9. Daniel Mansi

10. Jesse Gonzalez

11. Matthew Klein

Note: Defendants may not call all of the designated witnesses as such testimony will be dependant upon the evidence Plaintiffs present to prove the allegations set forth in the Complaint.

vi. Designation of deposition testimony to be offered in case in chief/cross-designations and objections (with grounds)

Plaintiffs designate the following testimony:

Kolman Brown:

10:15 - 25; 11:22 - 12:16; 38:16 - 20; 49:16 - 22; 50:11 - 24; 53:20 - 54:9;
59:18 - 22; 60:14 - 61:10; 72:7 - 12; 74:3 - 21; 75:2 - 9; 75:13 - 25; 76:2 - 10; 76:22 - 77:10;
78:12 - 79:18; 79:20 - 24; 80:3 - 10; 80:25 - 81:8; 81:20 - 82:7; 82:8 - 19; 84:12 - 24; 86:20 -
87:6; 88:6 - 89:2; 89:3 - 15; 95:21 - 96:1; 97:25 - 98:15; 98:16 - 18; 100:4 - 20; 102:7 -
10; 102:11 - 13; 104:11 - 20; 107:22 - 108:18; 114:9 - 17; 115:16 - 116:3; 117:5 - 21; 117:22 -
118:9; 118:10 - 119:13; 119:21 - 120:5; 120:13 - 23; 122:19 - 123:11; 126:22 - 127:4; 127:18 -
128:5; 128:8 - 129:4; 129:5 - 10; 131:3 - 17; 131:21 - 132:3; 136:22 - 137:11; 138:3 - 10;
139:9 - 25; 140:18 - 22; 142:18 - 143:19; 143:20 - 22; 143:23 - 144:7; 145:2 - 8; 147:15 -
148:4; 152:2 - 19; 154:15 - 20; 155:18 - 156:11; 160:10 - 16; 163:17 - 23; 164:16 - 19;
164:23 - 165:20; 165:25 - 166:13; 166:17 - 21; 169:12 - 170:11; 170:12 - 17; 172:2 - 6;
172:7 - 173:3; 174:25 - 175:4; 175:5 - 11; 184:9 - 21; 184:22 - 186:2; 191:5 - 13; 191:19 -
192:1; 192:17 - 24; 192:25 - 193:7; 195:2 - 16; 196:19 - 197:11; 197:12 - 199:11; 199:21 -
200:4; 201:16 - 24; 206:3 - 207:7; 208:14 - 209:15; 210:15 - 211:16; 216:2 - 8; 216:9 -
218:20; 218:21 - 219:22; 227:8 - 228:7; 228:20 - 229:2; 229:9 - 12; 234:22 - 235:16; 242:9 -
17; 244:25 - 246:3; 250:12 - 251:4; 251:5 - 252:18; 262:11 - 263:13; 263:14 - 24; 267:6 -
16; 267:21 - 268:4; 268:5 - 18; 268:19 - 269:8; 271:23 - 272:4; 272:6 - 273:2; 274:13 -
275:10; 275:11 - 276:5; 276:6 - 25; 277:2 - 10; 278:11 - 21; 278:22 - 281:24; 287:9 - 288:20;
288:21 - 289:6

Rachel Brechner:

42:17 - 24; 42:25 - 44:13; 72:23 - 73:18; 73:23 - 74:16; 75:3 - 76:4; 76:15 - 20; 80:14 - 81:17;
81:25 - 82:12; 84:19 - 85:10; 85:11 - 86:13; 86:19 - 87:22; 88:14 - 22; 88:23 - 89:15; 91:13 -
92:3; 92:4 - 93:2; 93:23 - 25; 95:17 - 96:2; 96:3 - 9; 99:11 - 16; 100:7 - 101:9; 111:21 - 25;
112:24 - 114:3; 114:20 - 115:4; 115:5 - 14; 117:8 - 14; 118:17 - 23; 118:24 - 119:7; 120:6 -
24; 131:17 - 24; 152:7 - 154:12; 154:13 - 155:2; 155:3 - 12; 155:13 - 156:15; 156:16 - 157:4;
198:11 - 199:4; 201:2 - 15; 202:25 - 203:8; 212:8 - 215:13; 215:14 - 216:11; 219:7 - 222:8;
225:13 - 226:13; 229:21 - 25; 230:2 - 11; 232:5 - 14; 238:6 - 8; 238:9 - 240:6; 240:9 - 15;
242:18 - 244:11

Frank Fiore

18: 3-10; 19: 6-23; 23: 19-25; 27: 15-25; 28: 1-8; 34: 5-25; 35: 17-24; 36: 3-24; 49: 7-25; 50: 1-24; 51: 8-25; 52: 1-4; 54: 11-25; 55: 1-25; 56: 1-25; 57: 1-25; 63: 4-25; 69: 7-25; 70: 1-25; 71: 1-25; 72: 1-25; 81: 7-24; 82: 3-25; 83: 1-19; 88: 21-24; 90: 3-19; 93: 5-25; 94: 1-12; 97: 12-25; 98: 1-25; 99: 4-25; 100: 12-25; 101: 2-25; 102: 1-25; 103: 1-23; 105: 5-25; 106: 1-16; 107: 4-25; 108: 1-17; 109: 15-25; 110: 1-25; 111: 1-13; 119: 1-25; 120: 1-21; 124: 8-25; 125: 1-25; 126: 1-25; 148: 1-25; 152: 13-25; 153: 1-23; 155: 10-25; 156: 1-25; 157: 1-25; 158: 1-25; 159: 1-25; 160: 1-5; 162: 1-23; 163: 5-25; 164: 1-25; 165: 1-19; 190: 1-25; 200: 4-25; 201: 1-25; 202: 1-25; 203: 1-25; 204: 1-25; 205: 1-25; 206: 1-25; 207: 1-25; 208: 1-25; 210: 9-25; 211: 1-6; 215: 22-25; 216: 1-25; 217: 1-25; 218: 1-25; 219: 1-25; 220: 1-20; 239: 3-25; 240: 1-16; 241: 1-25; 242: 1-9; 243: 21-25;

David Brown

20: 15-25; 21: 1-23; 22: 1-9; 23: 3-16; 29: 9-25; 30: 1-23; 33: 12-25; 34: 1-9; 35: 25; 36: 1-14; 43: 5-25; 44: 1-25; 45: 1-25; 46: 1-25; 48: 1-25; 50: 3-25; 51: 1-25; 52: 1-20; 56: 11-20; 57: 5-25; 58: 1-25; 59: 1-25; 60: 1-25; 61: 1-25; 62: 1-25; 63: 1-25; 66: 3-25; 67: 1-25; 68: 1-25; 73: 23-25; 74: 1-25; 75: 1-17; 76: 1-25; 77: 1-25; 78: 1-25; 79: 1-25; 80: 1-25; 84: 1-25; 85: 13-25; 88: 17-25; 89: 1-3; 91: 12-25; 92: 1-19; 95: 10-25; 96: 1-25; 97: 1-25; 98: 1-25; 99: 1-21; 105: 8-25; 106: 1-25; 107: 1-20; 108: 4-24; 109: 11-25; 110: 1-24; 111: 23-25; 112: 1-25; 113: 1-25; 114: 1-10; 119: 16-25; 120: 1-16; 142: 7-25; 143: 1-25; 144: 1-25; 145: 1-25; 146: 1-23; 147: 1-25; 148: 1-25; 149: 1-2; 152: 4-25; 153: 1-25; 154: 1-25; 155: 1-25; 156: 1-25; 157: 1-25; 158: 1-25; 159: 1-25; 160: 1-10; 164: 20-25; 165: 1-25; 172: 23-25; 173: 1-10; 175: 17-24; 176: 9-25; 177: 1-25; 178: 1-25; 179: 12-25; 180: 1-8; 189: 10-25; 190: 1-25; 191: 24-25; 192: 1-25; 193: 1-25; 194: 1-12; 197: 1-15; 198: 10-22; 203: 14-25; 204: 1-24; 207: 13-25; 208: 1-25; 209: 1-9;

Daniel Mansi

25:12 - 26:10; 26:11 - 27:13; 63:12 - 64:20; 64:21 - 65:14; 67:24 - 68:12; 71:24 - 72:9; 73:5 - 74:21; 78:7 - 79:2; 83:19 - 84:6; 84:7 - 25; 89:25 - 91:9; 92:7 - 19; 97:14 - 25; 103:5 - 7; 107:8 - 16; 109:12 - 16; 110:4 - 11; 110:16 - 25; 113:5 - 13; 127:4 - 9; 127:17 - 23; 132:15 - 133:2; 134:24 - 135:6; 154:16 - 155:12; 156:9 - 12; 168:22 - 25; 169:2 - 22; 175:5 - 176:5; 176:6 - 177:18; 177:23 - 180:8; 180:9 - 23; 181:6 - 25; 183:24 - 184:7; 196:20 - 197:24; 199:23 - 200:11; 200:12 - 201:10; 204:10 - 205:14; 207:2 - 13; 219:6 - 220:12; 225:2 - 8; 246:17 - 247:4; 247:5 - 24; 252:23 - 253:2; 253:3 - 23; 264:25 - 265:11; 266:5 - 11; 290:12 - 16; 290:24 - 291:4; 291:12 - 18.

Plaintiffs reserve the right to enter as evidence such much of the deposition testimony of this witness as conflicts with his testimony at trial.

Plaintiffs reserve the right to enter as evidence such much of the deposition testimony of Defendants' witnesses as conflicts with their testimony at trial.

Defendant designates the following testimony:

Rohit Chetal

8:11 – 10:2; 51:16 – 54:2; 56:22 – 57:10; 58:14 – 59:23; 87:11 – 90:03; 119:17 – 121:8; 122:4 – 122:7; 150:7 – 151:13.

Aaron Daniels

6:18 – 9:19; 13:6 – 17:14; 18:8 – 19:16; 120:13 – 124:8; 149:16 – 163:3; 164:6 – 174:5; 175:7 – 176:16.

Defendants reserve the right to enter as evidence additional portions of the deposition testimony of the witness as conflicts with his testimony at trial.

vii. List of Exhibits

#	Plaintiffs' Exhibits	Bates Nos.	* = Obj.	Basis for Objection
1	Defendants' Corporate Organization Board	None.		
2	Emails regarding Overtime	DanielsPlts'Prod000001-000003		
3	Complaint in previous FLSA case involving Defendants	None.	*	Hearsay if offered for the truth of the allegations contained therein.
4	Defendants' Answers to Interrogatories	None.		
5	Defendants' Responses to Request for Admission	None.		
6	Mortgage Specialist Compensation Plans	See Plts' Dep. Ex. 1, 9, 10		
7	August 15, 2008 email from Robert Miller	See Plts' Dep. Ex. 4		
8	Loan Officer Agreements	See Plts' Dep. Ex. 5, 6		
9	Compensation Reports	D00001-000645		
10	Loan Officer	See Plts' Dep. Ex. 14		

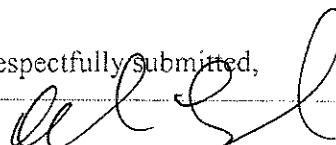
	Responsibilities			
11	Loan Officer Job Listings	See Plts' Dep. Ex. 16, 17, 27		
12	Employee Classification Form	See Plts' Dep. Ex. 18		
13	Defendants' Policy Manuals	None.		
14	September 9, 2009 email from Adam Brown	See Plts' Dep. Ex. 23		
15	Department of Labor Materials	See Plts' Dep. Ex. 25 and 113 page response to FOIA request		
16	Branch Commission Policy	Not bates stamped		
17	Plaintiffs' declarations	None.	*	Hearsay if offered for the truth of the allegations contained therein.

Defendant's Exhibits

1. Plaintiffs' Complaint;
2. All Consents to Join Collective Action filed in this action
3. All Declarations filed by any Plaintiff and/or any individual who consented to join the action.

Dated: July 15, 2011

Respectfully submitted,


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Frank Fiore Fiore

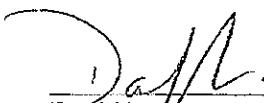
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